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In The

Supreme Court of the United States

October Term, 1996

JAMES L. SAFFLE, Director, RON WARD, Warden of Oklahoma State Penitentiary; MICHAEL ROARK, Chairman of the Board of Corrections; HUGH REED; JOE R. MANNING JR.; DANIEL BINTZ; RANDY WHITE AND BEVERLY YOUNG; ALL MEMBERS OF THE OKLAHOMA BOARD OF CORRECTIONS, Oklahoma Board of Corrections,

Petitioners,

v.

BOBBY BATTLE, Class Representative for all Persons Incarcerated by the Oklahoma Department of Corrections,

Respondents,

and

UNITED STATES OF AMERICA,

Intervenor-Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit After Remand From The Supreme Court

PETITION FOR WRIT OF CERTIORARI

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February, 1997

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QUESTIONS PRESENTED

1. In a twenty-five year "structural injunction" suit over prison conditions, does a 1982 finding that prison system is constitutional deprive federal courts of authority to enforce remedial compliance orders and injunctions left in effect where respondent parties lack standing as there can be no actual injury?

2. In a twenty-five year "structural injunction" suit over prison conditions, does the Prison Litigation Reform Act of 1996 mandate termination of all prospective injunctive relief where there has been a finding of constitutionality since 1982?

3. Can post-judgment injunctions and orders be enforced by contempt proceedings contrary to Fed. R. Civ. P. 65(d) which prohibits the creation of injunctions by reference to other documents?

LIST OF PARTIES

The parties to this proceeding on *Petition for Writ of Certiorari* are:

Petitioners:

(Defendants in the District Court and Appellees in the United States Court of Appeals for the Tenth Circuit in their official capacities only, automatic substitutions indicated below):

LARRY FIELDS, now JAMES L. SAFFLE, Acting Director:

DAN REYNOLDS, now RON WARD, CALVINO S. MUSE, HUGH REED WILLIAM EVANS, now BEVERLY YOUNG PHIL DESSAUER, now HUGH REED, JOE R. MANNING, JR. GREGORY H. HALL, now MICHAEL ROARK and DANIEL BINTZ

Respondents:

(Plaintiffs in the District Court and Appellants in the United States Court of Appeals for the Tenth Circuit):

Bobby Battle, Class Representative, for all persons incarcerated by the Oklahoma Department of Corrections.

United States of America, Intervenor under 42 U.S.C. § 2000h-2

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PRELIMINARY STATEMENT

The Tenth Circuit opinion in this case is in conflict with the Fourth Circuit Court of Appeals' opinion of *Plyler v. Moore*, 100 F.3d 365, (4th Cir. 1996), decided November 14, 1996 covering immediate termination of prospective relief in institutional reform cases where there were no findings required by the Prison Litigation Reform Act.

The Tenth Circuit opinion is also in conflict with circuit opinions that require Rule 65(d) to be strictly construed to give effect to its plain, mandatory language prohibiting contempt hearings on alleged violations of injunctions, unless the order granting the injunction sets forth the reasons for its issuance; is specific in terms; described in reasonable detail, ***and not by reference to the complaint or other document***.

The case presents the Court with the opportunity to again define when federal courts must return control of state prison systems to state officials under the Prison Litigation Reform Act of 1996, resolve a conflict among the circuits, and in the process end a twenty-five year old "structural injunction" lawsuit which has lost its reason for existence. The litigation lives on in the form of out-dated post-judgment compliance orders and injunctions against a state prison system. The injunctions' requirements exceed constitutional standards. Both the United States District Court for the Eastern District of Oklahoma and the United States Court of Appeals for the Tenth Circuit determined by 1982 that the Oklahoma prison system met constitutional standards. The Tenth Circuit refuses to return control to state officials, in direct conflict

with decisions of this Court and the Prison Litigation Reform Act.

According to this Court's decisions, the appellate court's and district court's findings that the system is operating constitutionally deprived the district court of power to enforce the injunctions or orders, and post-judgment injunctions should have been dissolved. In addition, the Prison Litigation Reform Act of 1996 (PLRA) Pub.L. No. 104-134, 110 Stat. 1321, prohibits prospective relief against prison officials unless the prospective relief enjoins unconstitutional action, the relief is narrowly drawn, extends no further than necessary and is least intrusive. Under the PLRA, if conditions become constitutional, injunctions must terminate.

Although this court's decisions demonstrate that the injunctions in the instant case should dissolve and the Prison Litigation Reform Act dictates that the injunction must terminate, the Tenth Circuit's Opinion and Judgment, reaffirming its prior order (which was vacated by this Court) directs the district court to hold an evidentiary hearing on the possible dissolution of the injunctions and on Plaintiffs' attempt to enforce (via Rule 70 Fed. R. Civ. P. contempt proceedings) compliance orders and injunctions. The Circuit Court's remand unnecessarily perpetuates pointless post-judgment litigation.

This case is important because unwarranted perpetuation of the injunctions directly contradicts this Court's principle that the federal judiciary's supervision of state public institutions must end and control must be returned to the officials of the public institution in all cases where there is no actual injury-in-fact or imminent danger of

actual injury. The Tenth Circuit's failure to recognize that the district court has no power to continue to enforce post-dismissal injunctions results in recurrent attempts by parties who no longer have standing to relitigate matters resolved fifteen years ago.

OPINION BELOW

The Opinion and Judgment of the United States Court of Appeals is dated November 7, 1996, and was issued sua sponte as an unpublished opinion, *Opinion and Judgment*, Nos. 95-7164 and 96-7013, *cons.* November 7, 1996. (Appendix A). The panel decision reaffirmed the prior order of the Circuit issued March 29, 1996 (Appendix B) and reversed by this Court on October 7, 1996 in No. 95-2090. (Appendix C). The unreported decision of the Eastern District of Oklahoma dissolving post-judgment injunctions is at Appendix D.

STATEMENT OF JURISDICTION

The judgment of the Tenth Circuit was entered November 7, 1996. The enforcement of the opinion was stayed by the Tenth Circuit court of Appeals pending resolution of this petition. Petitioners invoke this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1) permitting review "[b]y writ of certiorari granted upon the petition of any party to any civil or criminal case before or after rendition of judgment or decree[.]" This Petition for Writ of Certiorari is timely filed within 90 days of November 7, 1996.

STATUTORY AND CONSTITUTIONAL PROVISIONS

United States Code, Title 42:

§ 1983. Civil Action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit or equity, or other proper proceeding for redress. For the purposes of this section, and Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. (R.S. § 1979; Pub. L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284.)

Amendment VIII Constitution of the United States:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV Constitution of the United States:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law;

nor deny to any person within its jurisdiction the equal protection of the laws.

Const. Art. III, § 2, cl.1, Constitution of the United States

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the Laws of the United States and Treaties made, or which shall be made, under their authority; – to all cases affecting ambassadors, other public ministers and consuls; – to all cases of admiralty and maritime jurisdiction; – to controversies to which the United States shall be a party; – to controversies between two or more States; – between a State and citizens of another State; – between citizens of different States; – between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

Title 18 U.S.C. § 3626(A)(1) provides as follows:

(A) REQUIREMENTS FOR RELIEF.

(1) PROSPECTIVE RELIEF. (A) Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

Title 18 U.S.C. § 3626(b)(2) provides as follows:

(B) TERMINATION OF RELIEF

(2) IMMEDIATE TERMINATION OF PROSPECTIVE RELIEF. In any civil action with respect to prison conditions, a defendant or intervenor shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

STATEMENT OF THE CASE

Former Oklahoma inmate Bobby Battle filed a 42 U.S.C. § 1983 lawsuit, appearing pro se, in 1972.[1] Battle's complaint challenged his conditions of confinement in the Oklahoma prison system. Plaintiff acquired public interest lawyers who garnered class certification with Mr. Battle as sole class representative. The United States through the Civil Rights Division of the Department of Justice intervened under 42 U.S.C. § 2000h-2, which allows the Attorney General to intervene on issues seeking relief "from denial of equal protection . . . on account of race, color, religion, sex or national origin." Eventually, Oklahoma State officials presented the trial court with a

[1] Mr. Battle has not been incarcerated in the prison system since the system was found constitutional. There is no allegation that Mr. Battle has suffered or will suffer any actual injury-in-fact.

plan to alleviate alleged constitutional deficiencies. The class representative objected, but the court accepted the plan.

By 1982, the district court decided that the system was complying with constitutional requirements. The United States joined defendants and the court in this position. Only the class representative appealed. A panel of the Tenth Circuit affirmed, finding that the system met constitutional standards. *Battle v. Anderson*, 708 F.2d 1523, 1537 (10th Cir. 1983), *cert. dis.*, 465 U.S. 1014, 104 S.Ct. 1019. The Circuit Court, however, decided that the district court should continue to exercise supervisory power until it found that there was *no reasonable expectation that unconstitutional practices would recur. Battle v. Anderson*, 708 F.2d at 1538.

In 1983, the trial court dismissed the entire case, holding that there was no reasonable expectation that unconstitutional practice would recur. *Memorandum Opinion and Order*, December 30, 1983. On appeal, the Tenth Circuit affirmed, with one exception,[2] *Battle v. Anderson*, 788 F.2d 1421 (10th Cir. 1986). The Tenth Circuit affirmed the district court's decision to dismiss the underlying causes of action, but retained post-judgment injunctions and orders protecting *constitutional violations. Id.* at 1429 (emphasis added).

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[2] The Circuit Court determined that the record did not contain sufficient findings and conclusions to show a "reasonable likelihood" of continued compliance on the racial discrimination claim. *Battle v. Anderson*, 788 F.2d at 1423.

The Circuit let stand the single sentence upon which this case has stood for all these years:

> **All of this court's orders and injunctions as modified heretofore remain in full force and effect.**

In 1995, the district court, recognizing that state officials had met the appropriate standards for dissolution of the out-dated injunctions, notified parties and permitted the opportunity to present argument regarding the dissolution of the injunctions. Comprehending that the left-over injunctions prohibited only behavior which violated **constitutional** requirements, the district court specified that the altered Eighth Amendment standard[3] applied to the old injunctions.

The district court considered the parties' positions regarding the possible dissolution of injunctions and prior findings that the prison system was meeting constitutional standards as well as this Court's post-1982 decisions regarding Eighth Amendment standards. The district court properly dissolved the injunctions.

On appeal, the Tenth Circuit Court of Appeals ordered the case remanded for evidentiary hearings on both the question of dissolution of injunctions and plaintiffs' contempt motions. A petition for certiorari was

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[3] This Court's decisions in *Wilson v. Seiter* 501 U.S. 294 (1991), and *Farmer v. Brennan*, ___ U.S. ___, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994) modified the prior standard required to show an Eighth Amendment violation. In addition to showing that a defendant's behavior objectively violated the cruel and unusual punishment clause, these cases require the plaintiff to show that a defendant possessed a culpable state of mind.

sought and granted by this Court, vacating the opinion of the panel and remanding back for consideration of the Prison Litigation Reform Act.

The Circuit Court on remand and only days after receiving the order of this Court, sua sponte reaffirmed its prior order. Defendants again petition for a writ of certiorari.

I. THE TENTH CIRCUIT'S RENEWED INSTRUCTIONS TO THE DISTRICT COURT TO HOLD AN EVIDENTIARY HEARING ON POST-JUDGMENT INJUNCTIONS AND ORDERS IS EXTRA-JURISDICTIONAL AND CONTRARY TO THE LIMITED POWERS OF ARTICLE III COURTS TO ENTERTAIN CASES WHERE THERE IS NO STANDING, NO INJURY-IN-FACT AND NO IMMINENT DANGER OF ACTUAL INJURY.

In *Missouri v. Jenkins*, ___ U.S. ___, 115 S.Ct. 2038, 132 L.Ed.2d 63 (1995), this Court again acknowledged the limitations in the duration and scope of the federal judiciary's supervision of state institutions. The Court reviewed a long-standing injunction against a Kansas City public school district and determined that the district court's order directing the school district to grant interdistrict pay raises to correct intradistrict racial segregation was outside the scope of the injunction. Relying on *Board of Ed. of Oklahoma City Publ. Schools v. Dowell*, 498 U.S. 237 (1991), *Freeman*, 503 U.S. 467 (1992) and *Milliken*, 433 U.S. 267 (1977) this Court held that federal supervision of the institution was intended as a temporary measure to remedy past discrimination. *Missouri v. Jenkins*, 132 L.Ed.2d at 80, citing *Dowell*, 498 U.S. at 247. As this Court explained, the aim of federal injunctions against

public institutions is the eventual restoration of "state and local authorities to the control of a[n] [institution] that is operating in compliance with the Constitution." *Missouri v. Jenkins*, 132 L.Ed.2d at 81, quoting *Freeman*, 503 U.S. at 489. The Court further stated that federal court decrees which endeavor to eliminate conditions which are not violative of the Constitution exceed the appropriate limits. *Missouri v. Jenkins*, 132 L.Ed.2d at 86, quoting *Milliken* 433 U.S. at 282.

More recently the test for returning control of state systems to state officials was given specificity in *Lewis v. Casey*, ___ U.S. ___, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996) issued June 24, 1996. An Article III court is constrained by the rules of standing to remedying only actual injury-in-fact or imminent danger of actual injury. The Tenth Circuit's prior holding in this case that jurisdiction may be retained until the court is satisfied that there is no reasonable likelihood that unconstitutional behavior will return is simply not the law.

As this Court stated in *Insurance Corporation of Ireland, Ltd. v. Compagnie Des Bauxites De Guinee*:

> Subject matter jurisdiction . . . is an Art. III as well as statutory requirement; it functions as a restriction on federal power, and contributes to the characterization of the federal sovereign.

456 U.S. 694, 702, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982).

The long-standing *Battle* orders and injunctions, like the injunctions in *Jenkins*, must be limited in scope and duration. The district court was correct in recognizing that return of control to state officials was mandated. The Circuit Court's remand of the case and instruction to the

district court to hold an evidentiary hearings goes well beyond subject matter jurisdiction and was extra-jurisdictional.

A. ONCE THE DISTRICT COURT AND THE APPELLATE COURT FOUND THAT THE OKLAHOMA PRISON SYSTEM MET CONSTITUTIONAL STANDARDS, THE DISTRICT COURT HAD NO JURISDICTION TO ENFORCE THE OUT-DATED INJUNCTIONS AND PROPERLY DISSOLVED THEM.

Federal courts have the authority to enjoin only actions which violate constitutional standards. *Missouri v. Jenkins,* 132 L.Ed.2d at 86. The supervising court must strive to restore control of an institution operating in compliance with the Constitution to the proper officials. *Id.* at 81. A review of the instant case reveals that both the district court and the appellate court have determined that the prison system is constitutional. Following the district court's 1982 decision that the system was constitutional, a panel of the Tenth Circuit determined that the system met constitutional standards. The panel stated, " . . . we . . . agree that present conditions, as described by the district court appear constitutionally adequate under the standards set forth in *Rhodes*."[4] *Battle v. Anderson,* 708 F.2d at 1537 (10th Cir. 1983). Thus by 1983, even the Tenth Circuit Court found that all the conditions in the Oklahoma prison system were constitutional.

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[4] *Rhodes v. Chapman,* 452 U.S. 337 (1981).

Following affirmation of constitutionality of the prison system, in December of 1983, the district court dismissed the entire case. *Memorandum Opinion and Order*, No. 72-95-C, December 30, 1983. On appeal, the Tenth Circuit affirmed, with one exception.[5] *Battle v. Anderson*, 788 F.2d 1421 (10th Cir. 1986). The rub is that, the Tenth Circuit also affirmed the district court's decision to leave in effect those injunctions **against constitutional violations.** *Id.* at 1429 (emphasis added).

The findings of the district court in 1982 and 1983 as well as the findings of the Tenth Circuit in 1983 and 1986 repeatedly established that the prison system was meeting constitutional standards. The decisions that no constitutional violations existed unquestionably met the *Missouri v. Jenkins* "ultimate inquiry" for dissolving injunctions against institutions. The judicial determinations that the unconstitutional practices had ceased demonstrated state officials' good faith compliance with the injunctions and indicated that the past unconstitutional practices had been eliminated to the extent practicable. *Missouri v. Jenkins*, 132 L.Ed.2d at 81. In accordance with the decisions of the district court and the Tenth Circuit and with this Court's decisions in *Lewis v. Casey* and

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[5] The Tenth Circuit's 1983 decision affirmed the district court's 1982 decision that the prison system was constitutional and therefore established constitutionality as the law of the case. However, even under the appellate court's 1986 finding that system was constitutional on all claims including the racial discrimination claim. The Circuit Court did not think the record sufficient to show "reasonable likelihood" of continued compliance on the racial segregation claim.

Missouri v. Jenkins, the district court had no jurisdiction to revisit and enforce the old compliance orders.

B. ONCE THE DISTRICT COURT PROPERLY DISSOLVED THE INJUNCTIONS, THE TENTH CIRCUIT'S ORDER DIRECTING AN EVIDENTIARY HEARING WAS EXTRA-JURISDICTIONAL.

The circuit court's requirement that the district court hold an evidentiary hearing following the district court's appropriate dissolution of the injunction was outside the scope of the court's Article III powers and unnecessarily perpetuated the out-dated federal court intervention. The appellate court directed the district court to hear evidence on Plaintiffs' motions to enforce compliance orders and injunctions and the dissolution issues. However, the instruction to hear evidence on these issues was inappropriate.

1. The district court since 1982 is without jurisdiction and the parties are without standing to raise and have considered new factual allegations.

The Tenth Circuit Court remanded the case not only for the district court to determine whether the injunctions should be dissolved but also for the court to hold an evidentiary hearing on Plaintiff's motions to enforce the injunctions and contempt allegations. Plaintiffs' motions, however, are based on new factual allegations. Plaintiffs and the United States seek to relitigate compliance issues

lost in 1982. Plaintiffs seek contempt as the procedural vehicle for the new attack.

The district court has no jurisdiction to hear the newly created compliance allegations. In 1986, the circuit court affirmed the district court's dismissal of all causes of action except racial segregation. The appellate court explicitly found that the lower court's dismissal of the Eighth Amendment claim was without error. *Battle v. Anderson*, 788 F.2d at 1428-29. That Opinion left the district court, if anything, only with the authority to consider compliance issues surrounding the racial discrimination allegations. *Id.* at 1429.

The Circuit Court seems to have, at least in part, recognized its self-created dilemma. The court in its earlier order stated:

> Obviously, [the evidentiary] hearing will be limited to the issues raised by the parties' filings and cannot be used by the plaintiffs to expand the present case or, in effect, bring a new action.

Battle v. Fields, Order and Judgment, Nos. 95-7164 and 96-7013, *cons.*, March 29, 1996.

The Circuit Court half-recognized that the district court cannot hear new allegations at this late date. However, it improperly remanded the case for the district court to hear the new Eighth Amendment allegations introduced in Plaintiffs' motion.[6] The district court no

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[6] Allegations have been made about the use of dayroom space for dormitory bunking of inmates, to triple celling of female inmates and temporary use of old cellhouses for minimum security inmates. All of these new factual allegations are matters not of concern in 1982.

longer has jurisdiction to hear the new allegations, and the district court's consideration of these allegations would permit the Plaintiffs to improperly initiate new causes of action in this twenty-five-year-old litigation. Therefore, the Circuit Court's order remanding this case to the district court is improper and should be vacated.

II. THE PRISON LITIGATION REFORM ACT MANDATES THAT THE INJUNCTIONS IN THIS CASE BE TERMINATED.

On April 26, 1996, the President signed into effect the Prison Litigation Reform Act (PLRA). Section 802 of Title VIII, entitled "Appropriate Remedies for Prison Conditions," amends 18 U.S.C. § 3626. The clear intent of Congress as stated in § 802(b)(1) of the PLRA is that the amended § 3626 "shall apply with respect to all prospective relief[7] [in any civil action with respect to prison conditions] whether such relief was originally granted or approved before, on, or after the date of the enactment of this title."

Title 18 U.S.C. § 3626(b)(2) provides as follows:

(b) TERMINATION OF RELIEF

(2) IMMEDIATE TERMINATION OF PROSPECTIVE RELIEF. In any civil action with respect to prison conditions, a defendant or intervenor shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding

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[7] Prospective relief" is defined in 18 U.S.C. § 3626(g)(7) as "all relief other than compensatory monetary damages."

by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

Pursuant to the PLRA, the "orders and injunctions" in this case relating to prospective relief (i.e., continued compliance with the injunction) should be terminated. The PLRA requires that all prospective relief terminate unless the trial court has issued findings that the relief is narrowly drawn, extends no further than necessary to correct the violation of a federal right, and is the least intrusive means necessary to correct the violation. The district court did not, and cannot, make those findings. Once constitutionality was settled, the complaining parties lost standing. There is no longer jurisdiction as there simply can be no actual injury or imminent danger of actual injury. No case or controversy exists since 1982. If a case is no longer justiciable, the case may be resolved at any time, even during this Court's review of a petition for certiorari. *Roe v. Wade*, 410 U.S. 113, 125 (1973).

A. The 1979 Order approving Defendants' plan does not contain the required PLRA findings.

According to § 3626(b)(2) of the PLRA, the trial court granting prospective relief must make specific findings that the relief is narrowly drawn, extends no further than necessary to correct the violation of the federal right, and is the least intrusive means necessary to correct the violation of the Federal right. Absent such findings, § 3626(b)(2) provides that a defendant is entitled to "the immediate termination of any prospective relief."

It cannot reasonably be suggested that the 1979 Order approving the Defendants' plan contains the findings required by § 3626(b)(2). Even assuming that the 1979 Order ever met the PLRA's requirements, the district court and appellate court have determined that the prison system met constitutional standards. Leaving all orders and injunctions "as heretofore modified" in full force and effect was not the type of relief ordered to extend "no further than necessary to correct the federal right."

According to the district court and the Tenth Circuit, no violation of federal rights existed in 1982. Federal supervision should have ended. Prospective injunctive relief must be terminated immediately.

B. The prospective relief contained in the "orders and injunctions" is not narrowly drawn, not the least intrusive means to correct violations of federal rights, as required by PLRA and is not enforceable by contempt.

In the present case, the injunction cannot reasonably be described as extending no further than necessary to correct any violations presently identified. The law of the case in this litigation is that no violation of a federal right exists. As an example, the 1979 decree incorporated standards of the American Correctional Association as well as standards of the American Public Health Association and Life Safety Code. These standards represent goals of the Oklahoma Department of Corrections rather than minimum levels of operation necessary to satisfy the Constitution. *See Bell v. Wolfish*, 441 U.S. 520, 543-44, n. 27 (1979). The State's plan implementing standards such as these

was not an effort to meet the constitutional minimum but was a reflection of state officials' quest "to do more than that which is minimally required by the Constitution [in order] to settle a case and avoid further litigation. . . . " *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 392 (1992).

The PLRA mirrors the limits established by this Court in grants of relief in institutional reform litigation. In this case, both the district court and the appellate court have found the system constitutional. Therefore, pursuant to the PLRA, the orders and injunctions left in place must be terminated.

The State plan was instituted unilaterally by state officials. This matter has always been addressed to the limited authority of federal courts with no entry of consent order. The PLRA mandates an end to this case.

Further "orders and injunctions, as heretofore modified" are likewise not enforceable by contempt under Rule 65(d), Fed. R. Civ. P. The rule states:

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, ***and not by reference to the complaint or other document***, the act or acts sought to be restrained.

Circuit courts are split on the applicability of the rule. In the Tenth Circuit Rule 65(d) was recently held to be strictly construed to "give effect to its plain, mandatory language." *Consumer Gas & Oil, Inc. v. Farmland Industries, Inc.*, 84 F.3d 367, 371 (10th Cir. 1996) issued May 17, 1996. A court shall refrain from substituting "ad

hoc uncertainty for the rule's uniformity and clarity." *Id.* at 371.

> The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood, it can be a deadly one. Congress responded to that danger by requiring that a federal court frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid.

Schmidt v. Lessard, 414 U.S. 473, 476, 94 S.Ct. 713, 38 L.Ed.2d 661 (1974). Other circuits have not strictly construed Rule 65(d). *Williams v. City of Dothan*, 818 F.2d 755, 761 (11th Cir.) (" . . . the inquiry should be whether the parties subject to the injunctive order understood their obligations under the order."), modified, 828 F.2d 13 (11th Cir. 1987).

In this case no one can be sure what specific orders or injunctions "as heretofore modified" might someday be the subject of contempt proceedings. The Court should grant certiorari and enforce the strict reading of Rule 65(d) dismissing the motions for contempt.

CONCLUSION

The Tenth Circuit's reaffirmation of its vacated opinion directed the district court to take action it has no power or authority to take. The district court and the Circuit Court have already established that the Oklahoma prison system met constitutional standards.

The Tenth Circuit's order was contrary to this Court's limitation of perpetual institutional injunctions in *Lewis*,

Milliken, *Freeman*, *Dowell*, and *Jenkins*, and the orders and injunction must be dissolved. Statutorily, pursuant to the PLRA, all prospective relief must be terminated.

This Court should grant certiorari to review the Tenth Circuit's perpetuation of the antiquated compliance orders and injunctions against officials of the Oklahoma Department of Corrections and upon review, remand with instructions to terminate all prospective relief and dismiss all pending motions for contempt.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

BOBBIE BATTLE, et al., Plaintiffs-Appellants, v. LARRY FIELDS, Director; DAN REYNOLDS, Warden of Oklahoma State Penitentiary; CALVINO S. MUSE, chairman of the Board of Corrections; and HUGH REED; WILLIAMS EVANS; PHIL DESSAUER; JOE R. MANNING, JR.; GREGORY H. HALL; and DANIEL BINTZ; ALL MEMBERS OF THE OKLAHOMA BOARD OF CORRECTIONS, Oklahoma Board of Corrections, Defendants-Appellees,	)	Nos. 95-7164 & 96-7013 (D.C. No. CV-72-95) (E.D. Okla.)
UNITED STATES OF AMERICA, Plaintiff-Intervenor.	)	

ORDER AND JUDGMENT*

(FILED NOV. 7, 1996)

Before ANDERSON, TACHA, and EBEL, Circuit Judges.

This appeal was originally taken from a district court order, dated November 15, 1995, which dismissed all but one issue in the case and dissolved certain injunctions in this long-standing prison conditions litigation. Our disposition of the appeal, *Battle v. Fields*, No. 95-7164, 96-7013, 81 F.3d 172 (Table), 1996 WL 145675 (10th Cir. Mar. 29, 1996)(unpublished order and judgment), vacated the district court's order, remanded the case for a full and fair evidentiary hearing on the underlying motions, and directed that the case be transferred to a different district court judge. *Id.* at * *2. This case returns to us by mandate from the Supreme Court. The Court's order vacated our order and judgment and remanded the case to us "for further consideration in light of the Prison Litigation Reform Act of 1996." *Fields v. Battle*, 65 U.S.L.W. 3220, 65 U.S.L.W. 3255, 1996 WL 375974, at *1 (U.S. Oct. 7, 1996)(No. 95-2090).

We hereby readopt our previous conclusions, and reaffirm our order and judgment, dated March 29, 1996. Therefore, the district court's order of November 15, 1995, is vacated, and we again remand the case to the

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

district court for a prompt hearing on the underlying motions. In light of further proceedings in the district court following our March 29, 1996 order, it is clear that the court complied with our order to reassign the case to a different district court judge. We reaffirm that order on remand.

Initially on remand, the district court should consider the newly enacted Prison Litigation Reform Act, Pub.L. No. 104-134, 110 Stat. 1321 (PLRA). The PLRA purports to establish a new standard by which prison reform decrees are to be judged. To the extent that defendants have moved to modify or terminate the previous injunctions in this case pursuant to 18 U.S.C. § 3626(b)(2), and to the extent that plaintiffs have challenged the constitutionality or other applicability of the PLRA, the district court should consider such challenges to this legislation. If it determines that the PLRA is applicable and constitutional, we direct the district court to the requirement of 18 U.S.C. § 3626(e)(1) that the court "shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions."

Plaintiffs have filed an emergency motion urging this court, in part, to reaffirm our previous stay pending appeal of the district court's order and our reassignment of the case to a different district court judge. Plaintiff-intervenor had responded to the motion. Defendants filed a motion for extension of time to respond. In light of this opinion, plaintiffs' and defendants' motions are denied as moot.

The mandate shall issue forthwith.

ENTERED FOR THE COURT
PER CURIAM

APPENDIX B

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

BOBBY BATTLE, et al.,

Plaintiffs-Appellants,

v.

LARRY FIELDS, Director; DAN REYNOLDS, Warden of Oklahoma State Penitentiary; CALVINO S. MUSE, Chairman of the Board of Corrections; HUGH REED; WILLIAM EVANS; PHIL DESSAUER; JOE R. MANNING, JR.; GREGORY H. HALL; and DANIEL BINTZ; ALL MEMBERS OF THE OKLAHOMA BOARD OF CORRECTIONS, Oklahoma Board of Corrections,

Defendants-Appellees,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor.

No. 95-7164

(E.D. Oklahoma)

(D.C. No. CV-72-95)

BOBBY BATTLE, et al.; Plaintiffs-Appellants, UNITED STATES OF AMERICA, Plaintiff-Intervenor-Appellant, v. LARRY FIELDS, Director; DAN REYNOLDS, Warden of Oklahoma State Penitentiary; CALVINO S. MUSE, Chairman of the Board of Corrections; HUGH REED; WILLIAM EVANS; PHIL DESSAUER; JOE R. MANNING, JR.; GREGORY H. HALL; and DANIEL BINTZ; ALL MEMBERS OF THE OKLAHOMA BOARD OF CORRECTIONS, Oklahoma Board of Corrections, Defendants-Appellees.	No. 96-7013 (E.D. Oklahoma) (D.C. No. CV-72-95)

ORDER AND JUDGMENT*

(Filed Mar. 29, 1996)

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Before **ANDERSON, TACHA,** AND **EBEL,** Circuit Judges.

On October 28, 1994, the plaintiffs filed a motion to enforce certain injunctions previously entered in this case. On November 17, 1994, the district court issued an order denying the motion, and *sua sponte* dissolving the injunctions and dismissing the case, except for the Fourteenth Amendment segregation issue originally remanded by this court in 1986.

We subsequently vacated the district court's order and remanded the case with instructions to conduct an evidentiary hearing on the plaintiffs' motion and on the issue of dissolution. *Battle v. Fields,* No. 94-7175 (10th Cir. June 27, 1995), Appellants' App. Vol. III, Tab 18. The defendants thereafter filed a motion to terminate the case. The district court then directed the parties to present arguments in writing addressing the following question: "[W]hy shouldn't all of the existing injunctions be dissolved as a matter of law in light of . . . this Court's finding[ ] of compliance in 1983, and the Tenth Circuit affirming of that finding in 1986." Appellants' App. Vol. III, Tab 19, at 5-6. After the parties briefed that issue, the district court determined that "[t]o resolve this legal issue, . . . oral argument and an evidentiary hearing are unnecessary." *Battle v. Anderson,* No. 72-095-C, slip op. at 1 (E.D. Okla. Nov. 15, 1995), Appellants' App. Vol. III, Tab 26. The court then proceeded to enter an order on November 15, 1995, readopting its previous conclusions and once again dissolving the injunctions and dismissing

the case. With respect to the matter of an evidentiary hearing, the court reasoned as follows:

> If this court conducted further evidentiary hearings in accordance with the prior injunctions, the proceedings would necessarily require a retrial of the original case, based on present conditions, but using outdated standards. It is inconceivable that such a hearing would be of any value, although it would indeed be time consuming and expensive.
>
> . . . .
>
> If this court is required to conduct further evidentiary hearings, modification of the prior injunctions will be necessary to comport with existing caselaw. . . . [A]ny further evidentiary hearing without using present constitutional standards would be futile and encompass hours of unnecessary discovery and testimony.

Id. at 2-3.

At the plaintiffs' request, we stayed the district court's order pending appeal. The plaintiffs and the United States, as plaintiff-intervenor, filed separate notices of appeal, which we have consolidated.

As a threshold matter, we reject the argument advanced by the defendants that, in substance, this case was concluded in 1983. It is too late in the day in this litigation to dispute the existence and vitality of injunctions affecting the parties. Indeed, the district court's November 17, 1994, and November 15, 1995, orders specifically address the dissolution of such injunctions. Additionally, we have previously affirmed the district court's continuing jurisdiction over this litigation and have

explicitly recognized the continuing viability of the injunctions entered by the court. *See Battle v. Anderson*, 788 F.2d 1421, 1428 n.5 (10th Cir. 1986) ("[I]t is unmistak[a]bly clear that the orders and injunctions protecting the inmates against constitutional violations . . . remain in full force and effect."); *Battle v. Anderson*, 708 F.2d 1523, 1538-39 n.4 (10th Cir. 1983) ("If an injunction is to be effective, a court must retain continuing jurisdiction to enforce . . . the terms of its orders. The court cannot be divested of jurisdiction by temporary compliance with the injunction.") (citations omitted), *cert. dismissed*, 465 U.S. 1014 (1984). And, as already indicated, most recently we remanded the case to the district court with express directions to hold a hearing on the plaintiffs' enforcement motion and on the potential dissolution of the injunctions. *See* Appellants' App. Vol. III, Tab 18, at 2.

Regarding the procedural posture of the case, we respectfully disagree with the district court's conclusion that changed legal standards make an evidentiary hearing futile and unnecessary. In a case like this the validity of the parties' allegations and the propriety of dissolving the injunctions and dismissing the case cannot be properly determined *without* an evidentiary hearing. *See Battle*, 708 F.2d at 1539 (The district court " 'is the only court equipped to test evidentiary compliance and the only forum in which to raise any allegations of continuing deficiencies.' ") (quoting *Finney v. Arkansas Board of Correction*, 505 F.2d 194, 215 (8th Cir. 1974)). To the extent changed legal standards apply, one of the major purposes of a factual presentation is to establish on a point by point basis how such standards do or do not affect the existing injunctions. The resulting analysis and disposition by the

court will be directed to a relevant factual record. The evidence, together with the findings and conclusions of the district court, will then provide the record necessary for appellate review. It is the absence of such a record that prompted our remand in the first place.

Accordingly, we again vacate the district court's order and remand this case for a full and fair evidentiary hearing on the plaintiffs' motion to enforce the injunctions and on the defendants' motion, filed since our last remand, to dissolve the injunctions and dismiss the case. *Cf. Battle v. Anderson*, 594 F.2d 786, 789 (10th Cir. 1979) (remanding for further evidentiary hearings on defendants' compliance with court's prior orders). Obviously, that hearing will be limited to the issues raised by the parties' filings and cannot be used by the plaintiffs to expand the present case or, in effect, bring a new action. We of course express no opinion on the merits of the parties' motions or any other matter pending before the district court in this case.

Finally, we reluctantly conclude that on remand this case must be assigned to a new judge. The experienced district judge who has handled this case to date has done so with the utmost competence and professionalism. There is no question that the judge has and would continue to treat the parties with scrupulous fairness. However, the very basis for the court's order now on appeal is that an evidentiary hearing will be futile, and its conclusion is foregone. The appearance, not the fact, of bias arising from this reasoning would color future proceedings. The case may be reassigned on remand in accordance with the applicable local rules of the district court.

Accordingly, for the reasons stated above, the order of the district court is VACATED, and the case is REMANDED for further proceedings before a different judge.

ENTERED FOR THE COURT

Stephen H. Anderson
Circuit Judge

APPENDIX C

SUPREME COURT OF THE UNITED STATES

No. 95-2090

LARRY FIELDS, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL.,

Petitioners

v.

BOBBY BATTLE, ETC., AND UNITED STATES

ON WRIT OF CERTIORARI to the United States Court of Appeals for the Tenth Circuit.

THIS CAUSE having been submitted on the petition for a writ of certiorari and the responses thereto,

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the judgment of the above court in this cause is vacated, and the case is remanded to the United States Court of Appeals for the Tenth Circuit for further consideration in light of the Prison Litigation Reform Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321.

IT IS FURTHER ORDERED that the petitioners Larry Fields, Director, Oklahoma Department of Corrections, et al. recover from Bobby Battle, etc., and the United States Three Hundred Dollars ($300.00) for their costs herein expended.

October 7, 1996

Clerk's costs: $300.00

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

BOBBY BATTLE, et al., Plaintiffs	)	
v.	)	No. 72-095-C
PARK J. ANDERSON, et al., Defendants	)	

ORDER

(Filed Nov. 15, 1995)

This matter is before the court pursuant to an order of the United States Court of Appeals for the Tenth Circuit ("the Circuit Court") in *Battle v. Fields*, No. 94-7175 (10th Cir. June 27, 1995). In its order, the Circuit Court found that this court's order of November 17, 1994, denying plaintiffs' motion to enforce certain injunctions and dissolving all existing injunctions in the underlying case, should be vacated and remanded to this court to have a hearing to determine the issues raised by plaintiffs' motion[1] and to determine whether existing injunctions should be dissolved.

The parties have now had that opportunity to be heard on their respective positions, in that on September 21, 1995, the parties were given the opportunity, in fact,

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[1] Plaintiffs conceded, before the Circuit Court and this court, that the only issue raised by plaintiffs in their original motion, i.e., overcrowding at the Lexington facility, has been resolved.

they were directed to file briefs on the issue of whether or not this court should dissolve the prior injunctions in this case as a matter of law. The parties filed briefs, and none requested oral argument. To resolve this legal issue, this court finds oral argument and an evidentiary hearing are unnecessary, and that the parties have been afforded due process. *Dowell ex rel. Dowell v. Board of Educ.*, 8 F.3d 1501 (10th Cir. 1993); *United States v. Colorado*, 937 F.2d 505 (10th Cir. 1991).

In it's [sic] order of November 17, 1994, this court found that the previously entered injunctions were archaic and did not embody current constitutional requirements as enunciated and defined by more recent Supreme Court decisions, and the court dissolved those injunctions as a matter of law. *See, Farmer v. Brennan*, ___ U.S. ___, 114 S.Ct. 1970 (1994); *Wilson v. Seiter*, 501 U.S. 294 (1991). Plaintiffs have not addressed the obvious question of why the previous injunctions issued by this court are necessary to maintain and enforce constitutional standards in light of recent Supreme Court decisions setting modern constitutional standards for the operation of prisons. If this court conducted further evidentiary hearings in accordance with the prior injunctions, the proceedings would necessarily require a retrial of the original case, based on present conditions, but using outdated standards. It is inconceivable that such a hearing would be of any value, although it would indeed be time consuming and expensive.

This court notes, however, that other courses of action may be appropriate. As stated in this court's previous order, the class may urge recertification and new injunctions under current case law in a new lawsuit, or

the Circuit Court may agree with this court's finding that the issues raised by counsel are being addressed in a more efficient manner through individual prisoner §1983 petitions.

If this court is required to conduct further evidentiary hearings, modification of the prior injunctions will be necessary to comport with existing caselaw. In the unlikely event the Circuit Court directs additional evidentiary hearings on constitutionality, those hearings would be conducted within the parameters of the latest Supreme Court decisions, and the additional facts and status of the prisoners would be measured by the current Supreme Court constitutional standards. If additional evidentiary hearings to determine constitutionality are required, a significant new issue would be whether or not the defendants' have a defense based upon lack of intent due to a failure of the state legislature to appropriate funds or a "cost" defense. *Wilson,* 501 U.S. at 301-302. Because this is an open issue which has not been addressed by the Supreme Court, any further evidentiary hearing without using present constitutional standards would be futile and encompass hours of unnecessary discovery and testimony.

Since this court's order dissolving the prior injunctions, the plaintiffs have filed requests for injunctions, contempt and sanctions concerning the use of the condemned East cellhouses and alleged triple celling at the Mabel Basset Correctional Center. These issues, however, were not before the court at the time this court entered its order of November 17, 1994, dissolving the prior injunctions and ending its supervisory role over the Oklahoma

Penal System.[2] Therefore, this court finds those requests for further injunctive relief to be premature until this court's order of November 17, 1994, and this order, dissolving the prior injunctions on which the plaintiffs' current requests for injunctive relief are based, have been resolved.

Accordingly, after notice to and briefing by the parties, this court adopts its findings and order of November 17, 1994, dissolving the prior injunctions entered herein, and dismissing this case, except for the Fourteenth Amendment racial segregation issue originally remanded to this court by the Circuit Court in 1986.

IT IS SO ORDERED this 15 day of November, 1995.

/s/ Frank H. Seay
FRANK H. SEAY
United States District Judge

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[2] This court retains jurisdiction over the Fourteenth Amendment racial segregation issue.